

Proposed Regulations

22 VAC 40-705-10. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Abuser or Neglector" means any person who is found to have committed the abuse and/or neglect of a child pursuant to Chapter 12.1 (§63.1-248. et seq.) of Title 63.1 of the Code of Virginia.

"Administrative appeal rights" means the child protective services appeals procedures for a local level informal conference and a state level hearing pursuant to §63.1-248.6:1 of the Code of Virginia, under which an individual who is found to have committed abuse and/or neglect may request that the local department's records be amended.

"Appellant" means anyone who has been found to be an abuser and/or neglector and appeals the founded disposition to the director of the local department of social services, an administrative hearing officer, or to circuit court.

"Assessment" means the process by which child protective services workers determine a child's and family's needs.

"Caretaker" means any individual having the responsibility of providing care for a child and includes the following: (i) parent or other person legally responsible for the child's care; (ii) any other person who has assumed caretaking responsibility by virtue of an agreement with the legally responsible

person; (iii) persons responsible by virtue of their positions of conferred authority; and (iv) adult persons residing in the home with the child.

"Case Record" means a collection of information maintained by a local department, including written material, letters, documents, tapes, photographs, film or other materials regardless of physical form about a specific child protective services investigation, family or individual.

"Central Registry" means a subset of the information system of CANIS and is the name index with identifying information of individuals named as an abuser and/or neglector in founded child abuse and/or neglect complaints or reports not currently under administrative appeal, maintained by the department.

"Certified substance abuse counselor" means a person certified to provide substance abuse counseling in a state-approved public or private substance abuse program or facility.

"Child Abuse and Neglect Information System [~~CANIS~~]" means the computer system which collects and maintains information regarding incidents of child abuse and neglect involving parents or other caretakers. [~~CANIS~~ The computer system] is composed of three parts: the statistical information system with non-identifying information, the Central Registry, and a data base that can be accessed only by the department and local departments consisting of all nonpurged investigation information.

"Child protective services" means the identification, receipt and immediate investigation of complaints and reports of alleged child abuse and/or neglect for children under 18 years of age. It also includes assessment, arranging for and providing necessary protective and rehabilitative services for a child

and his family when the child has been found to have been abused or neglected or is at risk of being abused or neglected.

"Child protective services worker" means one who is qualified by virtue of education, training and supervision and is employed by the local department to respond to child protective services complaints and reports of alleged child abuse and/or neglect.

"Chronically and irreversibly comatose" means a condition caused by injury, disease or illness in which a patient has suffered a loss of consciousness with no behavioral evidence of self-awareness or awareness of surroundings in a learned manner other than reflexive activity of muscles and nerves for low-level conditioned response and from which to a reasonable degree of medical probability there can be no recovery.

"Collateral" means person whose personal or professional knowledge may help confirm or rebut the allegations of child abuse and/or neglect or whose involvement may help ensure the safety of the child.

"Complaint" means any information or allegation of child abuse and/or neglect made orally or in writing pursuant to §63.1-248.2:5 of the Code of Virginia.

"Consultation" means the process by which the alleged abuser and/or neglecter may request an informal meeting to discuss the investigative findings with the local department prior to the local department rendering a founded disposition of abuse and/or neglect against that person pursuant to §63.1-248.6:1 A of the Code of Virginia.

"Controlled Substance" means a drug, substance or marijuana as defined in § 18.2-247 of the Code of Virginia including those terms as they are used or defined in the Drug Control Act, Chapter 34 of Title 54.1 of the Code of Virginia. The term does not include alcoholic beverages or tobacco as those terms are defined or used in Title 3.1 or Title 4.1 of the Code of Virginia.

"Department" means the Virginia Department of Social Services.

"Disposition" means the determination of whether or not child abuse and/or neglect has occurred.

"Documentation" means information and materials, written or otherwise, concerning allegations, facts and evidence.

"Family Advocacy Program representative" means the professional employed by the United States Armed Forces who has responsibility for the program designed to address prevention, identification, evaluation, treatment, rehabilitation, follow-up and reporting of family violence, pursuant to 22 VAC 40-720-20.

"First source" means any direct evidence establishing or helping to establish the existence or non-existence of a fact. Indirect evidence and anonymous complaints do not constitute first source evidence.

"Founded" means that a review of the facts shows by a preponderance of the evidence that child abuse and/or neglect has occurred. A determination that a case is founded shall be based primarily on first source evidence; in no instance shall a determination that a case is founded be based solely on indirect evidence or an anonymous complaint.

"He" means he or she.

"His" means his or her.

"Identifying information" means name, social security number, address, race, sex, and date of birth.

"Indirect Evidence" means any statement made outside the presence of the child protective services worker and relayed to the child protective services worker as proof of the contents of the statement.

"Investigation" means the formal information gathering process utilized by the local department in determining whether or not child abuse or neglect has occurred.

"Investigative narrative" means the written account of the investigation contained in the child protective services case record.

"Legitimate interest" means a lawful, demonstrated privilege to access the information as defined in §63.1-209 of the Code of Virginia.

"Licensed substance abuse treatment practitioner" means a person who: (i) is trained in and engages in the practice of substance abuse treatment with individuals or groups of individuals suffering from the effects of substance abuse or dependence, and in the prevention of substance abuse or dependence; and (ii) is licensed to provide advanced substance abuse treatment and independent, direct and unsupervised treatment to such individuals or groups of individuals, and to plan, evaluate, supervise, and direct substance abuse treatment provided by others.

"Local department" means the city or county local agency of social services or department of public welfare in the Commonwealth of Virginia responsible for conducting investigations of child abuse and/or neglect complaints or reports pursuant to §63.1-248.6 of the Code of Virginia.

"Local department of jurisdiction" means the local department in the city or county in Virginia where the alleged victim child resides or in which the alleged abuse and/or neglect is believed to have occurred. If neither of these is known, then the local department of jurisdiction shall be the local department in the county or city where the abuse and/or neglect was discovered.

"Mandated reporters" means those persons who are required to report suspicions of child abuse and/or neglect pursuant to §63.1-248.3 of the Code of Virginia.

"Monitoring" means contacts with the child, family and collaterals which provide information about the child's safety and the family's compliance with the service plan.

"Multidisciplinary teams" means any organized group of individuals representing, but not limited to, medical, mental health, social work, education, legal and law enforcement, which will assist local departments in the protection and prevention of child abuse and neglect pursuant to §63.1-248.6 F of the Code of Virginia. Citizen representatives may also be included.

"Notification" means informing designated and appropriate individuals of the local department's actions and the individual's rights.

"Preponderance of evidence" means the evidence as a whole shows that the facts are more probable and credible than not. It is evidence which is of greater weight or more convincing than the evidence offered in opposition.

"Purge" means to delete and/or destroy any reference data and materials specific to subject identification contained in records maintained by the department and the local department pursuant to §§63.1-248.5:1 and 63.1-248.5:1.01 of the Code of Virginia.

"Reasonable diligence" means the exercise of justifiable and appropriate persistent effort.

"Report" means either a complaint as defined in this section or an official document on which information is given concerning abuse and neglect and which is required to be made by persons designated herein and by local departments in those situations in which investigation of a complaint from the general public reveals suspected child abuse and/or neglect pursuant to subdivision 5 of the definition of abused or neglected child in §63.1-248.2 of the Code of Virginia.

"Safety plan" means an immediate course of action designed to protect a child from abuse or neglect.

"Service plan" means a plan of action to address the service needs of a child and/or his family in order to protect a child and his siblings, to prevent future abuse and neglect, and to preserve the family life of the parents and children whenever possible.

"Substance abuse counseling or treatment services" are services provided to individuals for the prevention, diagnosis, treatment, or palliation of chemical dependency, which may include attendant medical and psychiatric complications of chemical dependency.

"Terminal condition" means a condition caused by injury, disease or illness from which to a reasonable degree of medical probability a patient cannot recover and (i) the patient's death is imminent or (ii) the patient is chronically and irreversibly comatose.

"Unfounded" means that a review of the facts does not show by a preponderance of the evidence that child abuse or neglect occurred.

"Withholding of medically indicated treatment" means the failure to respond to the infant's life-threatening condition by providing treatment (including appropriate nutrition, hydration, and medication) which in the treating physician's or physicians' reasonable medical judgment will be most likely to be effective in ameliorating or correcting all such conditions.

22 VAC 40-705-40. Complaints and reports of suspected child abuse and/or neglect.

A. Persons who are mandated to report are those individuals defined in §63.1-248.3 of the Code of Virginia.

1. Mandated reporters shall report immediately any suspected abuse or neglect that they learn of in their professional capacity.

2. Pursuant to Virginia Code §63.1-248.3 A1, [certain specified] facts indicating that a newborn infant was [may have been] exposed to controlled substances prior to birth is [are] sufficient to suspect that a child is abused or neglected. [A diagnosis of fetal alcohol syndrome is also sufficient.] Any report made pursuant to §63.1-248.3 A1 constitutes a valid report of abuse or

neglect and requires a CPS investigation, unless the mother sought treatment or counseling as required in this section and pursuant to §63.1-248.6 E 2.

- a. The attending physician may designate a hospital staff person to make the report to the local department on behalf of the attending physician. The hospital staff person may include a nurse or hospital social worker.

- b. Pursuant to §63.1-248.3 B of the Virginia Code, whenever a physician makes a finding [or diagnosis] pursuant to Virginia Code §63.1-248.3 A1, then the physician must make a report to CPS immediately. Pursuant to §63.1-248.3 B of the Virginia Code, a physician who fails to make a report pursuant to §63.1-248.3 A1 is subject to a fine.

- c. When a report or complaint alleging abuse or neglect is made pursuant to Virginia Code §63.1-248.3 A1, then the local department must immediately assess the infant's circumstances and any threat to the infant's health and safety. Pursuant to 22VAC40-705-110(A), the local department must conduct an initial assessment.

- d. When a report or complaint alleging abuse or neglect is made pursuant to Virginia Code §63.1-248.3 A1, then the local department must immediately determine whether to petition a juvenile and domestic relations district court for any necessary services or court orders needed to ensure the safety and health of the infant.

- e. Within the first fourteen days of receipt of a report made pursuant to §63.1-248.3 A1 of the Virginia Code, the local department shall invalidate the complaint if following two conditions are met: 1) the mother of the infant sought substance abuse counseling or treatment during

~~her pregnancy prior to the infant's birth; and 2) there is no evidence of child abuse and/or neglect by the mother after the infant's birth. [If, during the investigation but after the first fourteen days of the investigation, the local department gathers sufficient evidence to determine that the mother gained or sought substance abuse counseling or treatment prior to the infant's birth, then the local department shall complete the investigation; and if there is no evidence of abuse or neglect, shall render an unfounded disposition. If, during the investigation, the local department determines the mother did not gain or seek substance abuse counseling or treatment prior to the infant's birth, and, after completing the investigation finds no evidence of abuse or neglect, then the local department shall render an unfounded disposition.]~~

(1.) ~~The local department must notify the mother immediately upon receipt of a complaint made pursuant to Virginia Code §63.1-248.3(A1). This notification must include a statement informing the mother that, if the mother fails to [demonstrate present evidence] within fourteen days of receipt of the complaint that she sought substance abuse [counseling/treatment during the pregnancy, a the report will be transmitted to the Central Registry accepted as valid and an investigation initiated.]~~

~~[(2.) The burden is upon the mother of the infant to present evidence that she sought or gained substance abuse counseling or treatment prior to the child's birth.]~~

~~[(3.) The substance abuse counseling or treatment must have occurred during the mother's pregnancy.]~~

- [(2.) If the mother sought counseling or treatment but did not receive such services, then the local department must determine whether the mother made a ~~good faith~~ substantive] effort to receive substance abuse treatment before the child's birth. If the mother made a substantive effort to receive treatment or counseling prior to the child's birth, but did not receive such services, due to no fault of her own, then the local department should invalidate the complaint or report.
- [(3.) If the mother sought or received substance abuse counseling or treatment, but there is evidence, other than exposure to a controlled substance, that the child may be abused or neglected, then the local department may ~~continue~~ initiate] the investigation.
- f. Substance abuse counseling or treatment includes, but is not limited to, education about the impact of alcohol, controlled substances and other drugs on the fetus and on the maternal relationship; education about relapse prevention to recognize personal and environmental cues which may trigger a return to the use of alcohol or other drugs.
- [g.] The substance abuse counseling or treatment should attempt to serve the purposes of improving the pregnancy outcome, treating the substance abuse disorder, strengthening the maternal relationship with existing children and the infant, and achieving and maintaining a sober and drug-free lifestyle.
- [g.h] The substance abuse counseling or treatment services must be provided by a professional. Professional substance abuse treatment or counseling may be provided by a certified substance abuse counselor or a licensed substance abuse practitioner.

[h.i] Facts [establishing indicating] that the infant [was may have been] exposed to controlled substances prior to birth [is are] not sufficient, in and of [itself themselves.] to render a founded disposition of abuse or neglect. The local department must establish, by a preponderance of the evidence, that the infant was abused or neglected according to the statutory and regulatory definitions of abuse and neglect.

[i.i] The local department may provide assistance to the mother in locating and receiving substance abuse counseling or treatment.

2. 3. Mandated reporters shall disclose all information which is the basis for the suspicion of child abuse or neglect and shall make available, upon request, to the local department any records and reports which document the basis for the complaint and/or report.

3. 4. A mandated reporter's failure to report within 72 hours of the first suspicion of child abuse or neglect shall result in a fine.

B. Persons who may report child abuse and/or neglect include any individual who suspects that a child is being abused and/or neglected pursuant to §63.1-248.4 of the Code of Virginia.

C. Complaints and reports of child abuse and/or neglect may be made anonymously. An anonymous complaint, standing alone, shall not meet the preponderance of evidence standard necessary to support a founded determination.

- D. Any person making a complaint and/or report of child abuse and/or neglect shall be immune from any civil or criminal liability in connection therewith, unless the court decides that such person acted in bad faith or with malicious intent pursuant to §63.1-248.5 of the Code of Virginia.
- E. When the identity of the reporter is known to the department or local department, these agencies shall make every effort to protect the reporter's identity.
- F. If a person suspects that he is the subject of a report or complaint of child abuse and/or neglect made in bad faith or with malicious intent, that person may petition the court for access to the record including the identity of the reporter or complainant pursuant to §63.1-248.5:1 of the Code of Virginia.
- G. Any person age 14 years or older who makes or causes to be made a knowingly false complaint or report of child abuse and/or neglect and is convicted shall be guilty of a Class 4 misdemeanor for a first offense pursuant to §63.1-248.5:1.01 of the Code of Virginia.
1. A subsequent conviction results in a Class 2 misdemeanor.
 2. Upon receipt of notification of such conviction, the department will retain a list of convicted reporters.
 3. The subject of the records may have the records purged upon presentation of proof of such conviction.

- H. To make a complaint or report of child abuse and/or neglect, a person may telephone the department's toll-free child abuse and neglect hotline or contact a local department of jurisdiction pursuant to §63.1-248.4 of the Code of Virginia.
1. The local department of jurisdiction that first receives a complaint or report of child abuse and/or neglect shall assume responsibility to ensure that the complaint or report is investigated.
 2. A local department may ask another local department which is a local department of jurisdiction to assist in conducting the investigation. If assistance is requested, the local department shall comply.
 3. A local department may ask another local department through a cooperative agreement to assist in conducting the investigation.
 4. If a local department employee is suspected of abusing and/or neglecting a child, the complaint or report of child abuse and/or neglect shall be made to the juvenile and domestic relations district court of the county or city where the alleged abuse and/or neglect was discovered. The judge may assign the report for investigation to the court services unit or to a local department that is not the employer of the subject of the report pursuant to §63.1-248.3 and §63.1-248.4 of the Code of Virginia.

Statement of Final Action

On December 9, 1999, the State Board of Social Services adopted this regulation amending 22 VAC 40-705-10 et seq., *Child Protective Services*.

I certify that his regulation is full, true, and correctly dated.

Sonia Rivero, Acting Commissioner
Department of Social Services

Date: _____